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| 10/768,308 | 01/30/2004 | Richard Wayne Buskens | LUC-450/Buskens 6-1-1-1-2 | 6327 |

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| 32205          7590          07/21/2010 | | |
| Carmen Patti Law Group , LLC | EXAMINER | |
| ONE N. LASALLE STREET | WANG, RONGFA PHILIP | |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on _4/5/2010_.

2a)☒ This action is **FINAL**.        2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) _1-9 and 11-22_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-9, and 11-22_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

### Detail Action

1.    This office action is in response to the amendment filed on 4/5/2010.

2.    Per Applicant's request, claims 1 and 21 are amended.

3.    Additional documents are included in this office action for clarification purposes and are not considered as part of the rejections.

4.    Claims 1-9, and 11-22 are pending.

### Claim Rejections - 35 USC § 101

5.    Rejection of claims 1-9, 11-15, 21 and 22 have been withdrawn for the following reason. The applicant is being his own lexicographer and defining a computer-readable signal bearing medium to be only consisting of physical storage type medium, as the specification and claims were amended. The conventional meaning of a computer readable signal bearing medium would include the signal. However, considering the above mentioned amendment by the Applicant, the computer-readable signal-bearing medium has been interpreted by the Examiner to only include physical storage type medium, in light of the amendments to specification (page 10, amended on 5/8/2007) and the claims.

### Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

6.     Claims 1-9, 11-22 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

Claims 1-9, and 11-22 recite the limitation of a legacy management system. According

to the Applicant's remark, page 9, 1$^{st}$ paragraph, "...the legacy management system may refer to

an old or outdated management system..." According to the definition provided in the remark, a

legacy management system can be interpreted as an outdated management system. There is a

question regarding the precise definition of what is being considered as outdated management

system. Is a one-year-old manage system considered outdated or a three-months-old

management system considered outdated? Is a management system installed yesterday

considered outdated? Even with Applicant's another definition a legacy system – "does not

work well with up-to-date systems". Similar questions can be asked of what is the precise

definition of "does not work well". Does "does not work well" means does not work 70% of the

time or does not work 50% of the time? It is for these reasons the examiner consider the scope

of the claims indefinite.

Upon further review of the Specification, there are only two locations mentioning "legacy

system" (page 1, last paragraph). There is no further definition regarding what a legacy system

is at this location. The Applicant relies on generalized definition on the web (for example,

http://en.wikipedia.org/wiki/Legacy_system, as shown in Applicant's remark.). The examiner

performed similar search of the definition of "legacy system". The result is as shown as

"Definitions of Legacy System on the web". Third bullet item shows a definition of "legacy

system" as "A customer's existing system".   In this office action, the examiner interprets a

legacy system as an existing system.  Any system that is running in an environment is considered

an existing system.  If the Applicant intends to interpret otherwise, it is requested to identify

support in the specification for such interpretation.


*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
sale in this country, more than one year prior to the date of application for patent in the United States.

7.      Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Baughman (US Patent No. 6,408, 399).


As per claim 1, 16 and 21,

-     **a first manager component of a legacy management system that performs**

      **one or more first management operations on a software and/or hardware**

      **entity; and a second manager component that performs one or more second**

      **management operations on the software and/or hardware entity, wherein the**

      **second manager component comprise high availability services system**

      **software operating in a high availability domain; wherein the first manager**

      **component and the second manager component are configured to**

**concurrently share management responsibilities for the software and/or**
**hardware entity; wherein the first manager component and the second**
**manager component are configured for individual management**
**responsibilities**. (c4: 45-65, FIG. 3, "…a disk manager 107
and 117 resides on each computer 10 and 11 to manage
file manipulation of the shared disks 12 and 13…"
where 10 is the first manager, 11 is the second
manager. The system of Fig. 3 is in high-availability
domain. The examiner considers the first manager can
be at least one day old and therefore a legacy
management system of at least one day old.  The
examiner considers a one day old system is considered
as outdated as compared to today. ).

8.     Claims 1-9, 11-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson

(USPGPub. No. 2003/0058796).


As per claim 1, 16, and 21,  Anderson discloses

-     **a first manager component that performs one or more first management**
      **operations on a software and/or hardware entity; and a second manager**

**component that performs one or more second management operations on the software and/or hardware entity; wherein the first manager component and the second manager component are configured for individual management responsibilities** ([0018], for example, line 12-15, "…a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband…and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices. See also, FIG. 2; [0032], "...The core packet network and the physical network are managed and controlled by the signaling mange 16, the provisioning manager 18 and the traffic manager 20..."; [0068], "…The provisioning manager 18 is equipped with a redundant server for high availability…" where 16, 18 and 20 have their individual management responsibilities. See Figure 2, in one embodiment, signaling manager 16 is the first management component and provisioning manager is the second management component. Signaling manger has its individual management responsibility of controlling signals and provisioning manager has its individual management responsibility of provisioning the network. ) .

  - Wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity (in this scenario the first manager component and the second manager component function concurrently to share management responsibility).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

  - the first manager component and the second manager component are communicatively coupled ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

  - the first manager component and the second manager component coordinate the one or more first and second management operations to occur in a proper sequence ([0019], for example, "The signaling manager

> receives its working instructions from the traffic
>
> manage and from the provisioning manager…"; [0033],
>
> "…decide how to configure the logical networks on top
>
> of the physical network resources…").

As per claim 4,

the rejection of claim 1 is incorporated;

further  Anderson discloses

- upon detection by the first management component of an event associated with

  the software and/or hardware entity, the first manager component sends a

  notification to the second manager component;  wherein upon detection by the

  second management component of an event associated with the software and/or

  hardware entity, the second manager component sends a notification to the first

  manager component ([0021], shows monitoring of network

  event,[0018], [0019], show manager components

  communicating with each other. ).

As per claim 5,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first manager component starts up the software and/or hardware entity and the one or more software and/or hardware components; wherein the first manager component sends a notification to the second manager component to indicate that the software and/or hardware entity and the one or more software and/or hardware components have been started ([0020], for example, "provisioning element for non-real time circuits…performs…end point connections and port provisioning…"; [0018]-[0019]).

As per claim 6,

the rejection of claim 5 is incorporated;

further Anderson discloses

- the second manager component initializes one or more of the one or more software and/or hardware components; wherein the second manager component sends a notification to the first manager component to indicate that the one or more of the one or more software and/or hardware components have been initialized ([0020], for example, "provisioning element for non-real time circuits…performs…end point connections and port provisioning…"; [0018]-[0019]).

As per claim 7,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first and second manager components cooperate to initialize, monitor, and detect one or more failures of the software and/or hardware entity and one or more of the one or more software and/or hardware components, wherein the first and second manager components dynamically negotiate the individual management responsibilities. ([0021]).

As per claim 8,

the rejection of claim 7 is incorporated;

further Anderson discloses

- the first and second manager components cooperate to recover the software and/or hardware entity from the one or more failures ([0068], "...restored quickly in the event hardware failure...").

As per claim 9,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component sends a request to the second manager component to

    cause the second manager component to perform a management operation of the

    one or more second management operations on the software and/or hardware

    entity ([0019]).


As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the software

    and/or hardware entity operates outside of the high availability domain, wherein

    the high availability services software comprised the one or more second

    management operations; wherein the software and/or hardware entity interacts

    with the high availability domain ([0068], line 2, "...provisioning

    manager...high availability..." see Figure 2, where

    provisioning manager employ high availability.

    Signaling manager 16 can be considered outside the

    high availability domain of provisioning manager.).


As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain to employ one or more of the one or more second management operations of the high availability services software ([0068], line 2, "…high availability…", see Fig. 2).

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "…high availability…"; [0055], "The signaling manger has call exclusion rules for QoS rules on connections…", see Fig, 2, provisioning manager and signaling manager work together to accomplish provisioning the network. Therefore, there is no autonomous control.).

    .

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first
  manager component, the second manager component, and the software and/or
  hardware entity are responsible for one or more of setup and teardown of
  telecommunication connections ([0060], "…creating…and tearing
  down connections…").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more first software and/or
  hardware components and one or more second software and/or hardware
  components; wherein the first manager component controls the one or more first
  software and/or hardware components; wherein the second manager component
  controls the one or more second software and/or hardware components
  ([0018], for example, line 12-15, "…a traffic manager,
  a provisioning manager and a signaling manager perform
  all broadband and narrowband…and connections for all
  network devices."  In this scenario, the first manager
  component can be a traffic manager/signaling manager;

and the second manager component can be a provisioning

manager; and the software and/or hardware entity is

the network devices.).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

-   allowing the software and/or hardware entity to accept one or more first

    management operations from the first manager component and one or more

    second management operations from the second manger component, wherein the

    first and second manager components cooperate to initialize, monitor, and detect

    failures of the software and/or hardware entity ([0018], for example,

    line 12-15, "…a traffic manager, a provisioning

    manager and a signaling manager perform all broadband

    and narrowband…and connections for all network

    devices.", [0021], "…monitoring…"; [0058],

    "…provisioning…"; The examiner asserts that monitoring

    detect failures.)

As per claim 18,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the second manager component comprises high availability services
  software operating in a high availability domain, the method further comprising
  the steps of: operating the software and/or hardware entity outside of the high
  availability domain; and connecting the software and/or hardware entity with the
  high availability services software within the high availability domain ([0068],
  line 2, "…high availability…").


As per claim 19,

the rejection of claim 16 is incorporated;

further Anderson disclose

- sending one or more notifications between the first manager component and the
  second manager component to indicate occurrence of one or more events
  associated with the software and/or hardware entity ([0018], [0019]).


As per claim 20,

the rejection of claim 16 is incorporated;

further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first software
  and/or hardware components, wherein the step of configuring the software and/or

hardware entity for partial control by the first manager component and partial

control by the second manager component comprises the steps of: connecting the

one or more first software and/or hardware components with the first manager

component to employ one or more first management operations of the first

manager component; and connecting the one or more second software and/or

hardware components with the second manager component to employ one or

more second management operations of the second manager component and to

prevent autonomous control of the software and/or hardware entity by the first

manager component ((`[0018], for example, line 12-15, "…a`

`traffic manager, a provisioning manager and a`

`signaling manager perform all broadband and`

`narrowband…and connections for all network`

`devices.";[0068], line 2, "…high availability…").`

As per claim 22,

Anderson discloses

- first manager component and/or the second manager component access a configuration
  file to determine the individual management responsibilities of each of the first and
  second manager components ([0074]).

*Response to Arguments*

In the remark,

**1) Applicant argues –**

The term legacy management system is definite.

**1) Examiner's response --**

Upon further review of the Specification, there are only two locations mentioning "legacy system" (page 1, last paragraph). There is no further definition regarding what a legacy system is at this location. The Applicant relies on generalized definition on the web (for example, http://en.wikipedia.org/wiki/Legacy_system, as shown in Applicant's remark.). The examiner performed similar search of the definition of "legacy system". The result is as shown as "Definitions of Legacy System on the web". Third bullet item shows a definition of "legacy system" as "A customer's existing system". In this office action, the examiner interprets a legacy system as an existing system. Any system that is running in an environment is considered an existing system. If the Applicant intends to interpret otherwise, it is requested to identify support in the specification for such interpretation.

**2) Applicant argues –**

Baughman does not support the limitation of concurrently share management

responsibility and a legacy management system.

**2) Examiner's response –**

Arguments related to lack of showing a legacy system. Baughman's system is a running

system (cl: 24-27, "…two computers running in substantially in parallel…"), therefore

an existing system. Per definition as explained in previous examiner's response, it is

considered a legacy system.


Per Applicant argument related to "concurrently share" (see remark, page 11-12), it

appears Applicant interprets "concurrently share" as accessing the same resource at the

same instance of time, and only precisely at the same time. As a result, a system having a

full control of a resource can not be considered as concurrently sharing.   However, the

meaning of concurrency in computing does not appear to take such narrow definition.

See the attached NPL with explanation of what concurrent computing is.  Currently

sharing in computing includes interleaved access to a resource with some form of

locking.  As an analogy in plain English, two boys sharing an ice cream cone does not

have to lick the ice cream cone precisely the same time all the time.  One can have a bite

first (at this moment, this boy has total control of the ice cream, or resource) and the other

have a second bite next then take turns.  Assuming it takes 2 minutes to finish the ice

cream, it is considered two boys are currently sharing the same ice cream during the 2

minutes time period.  Similarly, in computing, concurrency has the same meaning of

sharing using some type of resource locking exclusion mechanism (for example,

semaphore). For reason explained above, Baughman appears to disclose the argued

limitation.

The examiner considered the claim language as presented does not reasonable distinguish

the scope of the claim with the recited prior art.

**3) Applicant argues –**

Anderson fails to disclose currently sharing and legacy management system.

**3) Examiner's response –**

Related to argument that Anderson fails to disclose a legacy management system, based

on reasons provided in examiner's response item 1 in this office action, the examiner interprets a

legacy system as a customer's existing system. It appears that the signaling manager, traffic

manager and provisioning manger are all customer's existing system and therefore legacy

systems.

Related to argument that Anderson fails to disclose currently sharing, please refer to examiner's

response in item 2 for interpretation of currently sharing. Fig. 2 discloses a network concurrently

managed by three systems – traffic manger, signaling manger and provisioning manager. [0048],

discloses how signaling manager concurrently manages the network with traffic manager. For

reasons above, the examiner considers Anderson discloses the above argued limitations.

*Conclusion*

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system.  Status information for published applications may be

obtained from either Private PAIR or Public PAIR.  Status information for unpublished

applications is available through Private PAIR only.  For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


/Philip  Wang/

Primary Examiner, Art Unit 2191